

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:

KEN BOURKLAND

V

No. 06-0726

COMMONWEALTH EDISON COMPANY

Complaint as to service in

Chicago, Illinois

Chicago, Illinois

November 15, 2007

Met pursuant to notice at 11:00 a.m.

BEFORE :

MS. LESLIE HAYNES, Administrative Law Judge.

APPEARANCES :

MR. KEN BOURKLAND,  
6N347 Old Homestead Road,  
St. Charles, Illinois 60175,  
appeared pro se;

MR. MARK L. GOLDSTEIN,  
108 Wilmot Road,  
Deerfield, Illinois 60015,  
appeared for the Respondent.

SULLIVAN REPORTING COMPANY, by  
Teresann B. Giorgi, CSR

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I N D E X

<u>Witnesses:</u>	<u>Dir.</u>	<u>Crx.</u>	Re- <u>dir.</u>	Re- <u>crx.</u>	By <u>Examiner</u>
NONE					

E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
NONE		

1 JUDGE HAYNES: Pursuant to the direction of  
2 the Illinois Commerce Commission I now call  
3 Docket 06-0726. This is the complaint of Ken  
4 Bourkland versus Commonwealth Edison Company, as to  
5 service in Chicago, Illinois.

6 May I have the appearances for the  
7 record, please.

8 MR. BOURKLAND: I'm Ken Bourkland, 6N347 Old  
9 Homestead Road, St. Charles, Illinois 60175.

10 MR. GOLDSTEIN: On behalf of Commonwealth Edison  
11 Company, Mark L. Goldstein, 108 Wilmot Road,  
12 Suite 330, Deerfield, Illinois 60015. My telephone  
13 number is 847-589-5480. And I have with me today  
14 John Parise of ComEd.

15 JUDGE HAYNES: Okay. I have inherited this  
16 docket from Judge Brodsky. And I have reviewed the  
17 transcripts. And I was wondering where we're at  
18 today. I understand that, perhaps, there's still  
19 discovery outstanding.

20 Would you like to bring me up to date,  
21 Mr. Bourkland, on your understanding of what  
22 discovery remains.

1       MR. BOURKLAND:   Okay.  I put a request into the  
2   Respondent asking for three sets of documents.  
3   We'll take them in order here.

4                       Item 1.  I specifically asked for the  
5   copy of the NESC that ComEd has in-house and they  
6   operate under as opposed to a published I Triple E  
7   text.  And this was the document provided by -- to  
8   them by IHF, This information handling service  
9   under --

10       THE REPORTER:  I'm sorry.

11       JUDGE HAYNES:  I'm sorry.  I'm not catching a  
12   lot of what you're saying.

13       MR. BOURKLAND:  I'm trying to see where I left  
14   off.

15                       Information handling service, that's  
16   what I -- under license to the I Triple E and the  
17   license to the Excelon Corporation.

18                       In affect, at the time ComEd crews  
19   raised the utility lines at Complainant's address  
20   from the existing elevation of 10 feet 4 inches to  
21   what they claim meets compliance at 12 feet.  That  
22   ICC complaint was of April 2006.

1                   The copy of the information they  
2 provided is not the one that I had requested. The  
3 one I had requested would have this information I  
4 just gave you in the lower right corner of every  
5 page of their document.

6                   Secondly, a copy that I have received  
7 from them is essentially unreadable because it's not  
8 in sharp focus.

9                   Item 2. I asked for a copy of the  
10 Illinois Public Act 92-0214, which they have  
11 complied with.

12                  Item 3. I asked for copies of all to  
13 and from communications, memos, notes, phone  
14 records, et cetera, relevant to Item 2, both before  
15 and after the date of September 26, 2006, involving  
16 Paul Micelli, Paul Calligan, Asplund, et al.

17       JUDGE HAYNES: Spell those, please.

18       MR. BOURKLAND: Paul Micelli, M-i-c-e-l-l-i.  
19 Paul Calligan, C-a-l-l-i-g-a-n. Asplund,  
20 A-s-p-l-u-n-d. And those associated with that.  
21 Pursuant to the unannounced visit to the  
22 Complainant's premises on said date.

1                   The documentation received is very  
2 brief. Amounts to nothing more than a summation  
3 after the work was done. And a communication from  
4 Paul Calligan that alludes to a conference call that  
5 we don't have any information about. And that was  
6 copied to the following people: Isaac Eckridge  
7 (phonetic), Kendal Hoge (phonetic), Paul Micelli,  
8 Allen Armstrong, Joseph Trecksler (phonetic),  
9 regarding this complaint.

10                   So, apparently, there were  
11 communications between these people prior to Paul  
12 Micelli's unannounced visit which is not in  
13 compliance with Public Act 92-0214.

14       JUDGE HAYNES: Okay. So it's essentially two  
15 items in there that you requested, NESC Code and  
16 then whatever memos they have with respect to the  
17 tree-cutting visit.

18       MR. BOURKLAND: That is correct. Because they  
19 are in violation of the National Electrical Safety  
20 Code. And I want to see what documents they operate  
21 by.

22       JUDGE HAYNES: Any response, Mr. Goldstein?

1           MR. GOLDSTEIN:   Yes.

2                       With respect to Mr. Bourkland's first  
3 request.   He made a request for Section 23 of the  
4 NESC.   I provided him with a copy I have.   I do  
5 agree with him that it is difficult to read, but  
6 that's what I have and that's what I gave him.   I  
7 could not get a clearer copy.

8                       With respect to the third item -- he  
9 already said he was satisfied with Item No. 2 -- we  
10 gave him all that we had with respect to various  
11 e-mails and memos, handwritten notes, which we could  
12 find.   That's what we have.   That's what we gave  
13 him.   And if he is not satisfied, I don't know what  
14 to do about trying to satisfy him.   He thinks there  
15 are other items that should be part of all that.  
16 There are none, and --

17          MR. BOURKLAND:   Objection.

18          MR. GOLDSTEIN:   You can object to anything you  
19 want, Mr. Bourkland, but let me finish.

20          MR. BOURKLAND:   I did.

21                       There is a note in the lower right  
22 corner of every page of the NESC document that ComEd

1 utilizes.

2 MR. GOLDSTEIN: Well, you've got the document  
3 yourself. What's your problem, then?

4 MR. BOURKLAND: I want to see --

5 MR. GOLDSTEIN: If you have the document, you  
6 can present it in evidence and we'll deal with it.

7 As far as I'm concerned, Judge, we've  
8 totally complied with this data request by  
9 Mr. Bourkland.

10 MR. BOURKLAND: I disagree.

11 JUDGE HAYNES: Mr. Bourkland, you have a copy of  
12 the Code?

13 MR. BOURKLAND: I have seen copies. I have a  
14 copy of the new edition. The one I'm interested in  
15 is what edition they had when the unannounced visit  
16 on April 2006 took place.

17 JUDGE HAYNES: Reviewing your complaint, I was  
18 under the impression this was merely trying to get  
19 the height of the ComEd's lines either to be higher  
20 or to be put underground.

21 MR. BOURKLAND: That is correct.

22 Your first request was about



1 documentation that was requested.

2 We can get to the next point.

3 JUDGE HAYNES: So I'm not clear what memos have  
4 to do with tree-cutting have to do with whether your  
5 lines are in compliance with the Safety Code.

6 MR. BOURKLAND: The fundamental issue here is my  
7 trees are not in their lines. Their lines are down  
8 too low and in the trees. The trees that are  
9 planted there were species recommended by an  
10 arborist from the Morton Arboretum in negotiations  
11 with Commonwealth Edison in 1990 after they cut down  
12 33 trees under that utility line to the ground.

13 So we are in compliance with the  
14 settlement that was made in 1990. And now because  
15 their lines are too low -- and there's a safety  
16 issue because this area is permitted to have horses,  
17 and they do not comply with the National Electrical  
18 Safety Code under those conditions.

19 They raised the line from 10 feet  
20 4 inches and brought it up to 12 when they should  
21 have gone much higher.

22 So what I'm getting to is, they have

1 done maintenance on that line, as of last year, and  
2 did not bring it into compliance with the National  
3 Electrical Safety Code.

4 JUDGE HAYNES: Okay.

5 MR. BOURKLAND: And in the meantime, they're  
6 making surprise visits to cut trees in violation of  
7 Public Act 92-214.

8 JUDGE HAYNES: Okay. I am going to deny your  
9 request for a copy of the National Electric Safety  
10 Code, given that you have a copy. And you will be  
11 free to present any argument with respect to the  
12 Code at our hearing.

13 And with respect to the third item for  
14 additional memos relating to that, Mr. Goldstein has  
15 indicated that they've supplied you with what they  
16 have.

17 Could you, perhaps, explain more what  
18 you think is missing?

19 MR. BOURKLAND: Yes.

20 What I have here is correspondence  
21 after the fact, after the surprise visit. And from  
22 what I read here is a portion of an e-mail, it says,

1 To All: Can we schedule a conference call regarding  
2 this customer. I have dealt with him previously and  
3 have some information to add before we do anything.

4                   There is no further notation regarding  
5 that conference call. So something was planned in  
6 advance --

7 JUDGE HAYNES: Okay. So, what is it --

8 MR. BOURKLAND: -- to making a visit without my  
9 knowing about it, and they were caught at it.

10 JUDGE HAYNES: This is an e-mail?

11 MR. BOURKLAND: This is a copy of an e-mail.

12 JUDGE HAYNES: What's the date of it?

13 MR. BOURKLAND: September 26th, 2006, 2:40 p.m.

14 JUDGE HAYNES: So five months after the April  
15 visit?

16 MR. BOURKLAND: The request of April 2006 was,  
17 Raise the line from 10 feet 4 inches to the NESC  
18 height.

19                   And on September 26th, 2006, was the  
20 visit out there by the vegetation management crew,  
21 who did tree-cutting with no notification and  
22 trespassed on the property.

1                   Public Act 92-214 says that they must  
2 give at least 21 days notice and no more than 90  
3 days notice.

4                   And it further states, Vegetation  
5 management activities by an electric utility shall  
6 not alter, trespass upon or limit the rights of any  
7 property owner.

8       JUDGE HAYNES:   Okay.   I'm just unclear on the  
9 dates.

10                  They came and cut your trees on what  
11 day?

12       MR. BOURKLAND:   September 26th, 2006, 11:30 a.m.

13       JUDGE HAYNES:   And the e-mail is dated September  
14 what, 24th?

15       MR. BOURKLAND:   Same day, September 26th, 2006,  
16 2:40 p.m.

17       JUDGE HAYNES:   So, after the trees --

18       MR. BOURKLAND:   After the event.

19                  Obviously, there was some planning  
20 involved.

21       JUDGE HAYNES:   Mr. Goldstein, do you have a  
22 response?

1       MR. GOLDSTEIN: As I previously stated, Judge,  
2 we've provided Mr. Bourkland everything that we have  
3 with respect to the tree-cutting that occurred on  
4 September 26th, 2006. If Mr. Bourkland is  
5 dissatisfied with that information and believes  
6 there is more information, and I've stated that  
7 there is none, he can perhaps request further  
8 discovery in order to test whether my statement to  
9 you is accurate or not. And there are things that  
10 he could do to do that. However, I'm not going to  
11 suggest what they are.

12       MR. PARISE: Your Honor, I actually personally  
13 went -- and this is after the fact -- to each of the  
14 individuals involved in this and asked them to give  
15 me everything they had, everything. And I sent him  
16 everything that they had. So what he's gotten is  
17 all that I have.

18       MR. BOURKLAND: So I take that to me that Paul  
19 Micelli acted alone without conferring with anyone  
20 before he violated the law?

21       MR. GOLDSTEIN: Well --

22       MR. BOURKLAND: Presumably he has a supervisor,

1 a chain of command.

2 JUDGE HAYNES: Mr. Bourkland, I'm just having  
3 trouble --

4 MR. BOURKLAND: There's two issues here, Judge.  
5 They did maintenance work on that line  
6 and they did not raise it to the NESC Code.

7 JUDGE HAYNES: Understood.

8 MR. BOURKLAND: And after they raised it, they  
9 came out there and cut trees without informing us.  
10 And apparently it was a planned event.

11 JUDGE HAYNES: Okay. So when I read your  
12 complaint what you're looking for here is to have  
13 the lines raised.

14 MR. BOURKLAND: That's the ultimate goal here.

15 JUDGE HAYNES: What else are you looking for the  
16 Commission to act on?

17 MR. BOURKLAND: I want the Commission to  
18 acknowledge that they have violated the law and  
19 reinforce the fact that they have to comply with  
20 this.

21 JUDGE HAYNES: As to the line height?

22 MR. BOURKLAND: As to the visitation to cut.

1 There was no notification. And a memo from  
2 Mr. Paul Micelli -- let me find the line here.

3 JUDGE HAYNES: So you're looking for a  
4 Commission order that says they must give you notice  
5 in the future if they're going to appear?

6 MR. BOURKLAND: It's more than a Commission  
7 order. It's a Public Act. It's law. House  
8 Bill 1776 --

9 JUDGE HAYNES: I'm just trying to figure out  
10 what all this discovery has to do with what you  
11 asked for in your complaint.

12 MR. BOURKLAND: Mr. Paul Micelli makes claims  
13 that, We trespass all the time, so it's okay. Well,  
14 it's in this memo --

15 MR. GOLDSTEIN: I think the proof of the pudding  
16 is when this matter comes to trial, Judge,  
17 Mr. Micelli will testify, Mr. Calligan will testify  
18 and --

19 MR. BOURKLAND: Excellent.

20 MR. GOLDSTEIN: -- then we'll find out what the  
21 real story is rather than Mr. Bourkland making  
22 comments that have no basis in law or anything else.

1       MR. BOURKLAND:   So you're saying that this is  
2 just a fan to cool myself (indicating).

3       MR. GOLDSTEIN:   Well --

4       MR. PARISE:   One other thing, your Honor, that  
5 didn't come up here is, ComEd is willing to either  
6 put the wires underground or to raise the wires if  
7 Mr. Bourkland is willing to pay for it. We don't  
8 want all of our customers to pay for his situation.

9       MR. BOURKLAND:   It is not the customer's  
10 responsibility for them to comply under the safety  
11 regulations. The responsibility lies fully with  
12 ComEd. And it's the charge (sic) to the ICC from  
13 the Illinois General Assembly to enforce that Code.

14                       To imply they have to do this at the  
15 customer's expense has no traction.

16       MR. GOLDSTEIN:   Let me say this, Judge.

17                       From the first day that we filed a  
18 response to Mr. Bourkland's complaint, we suggested  
19 that if he were to pay either for raising of lines  
20 or placing them underground that would be the end of  
21 the complaint.

22                       I believe somewhere along the line, in



1 one of the status hearings, I stated for the record  
2 that there are two issues here. The first issue is,  
3 what is the proper height for the lines that  
4 traverse Mr. Bourkland's property. And if the  
5 Commission finds that the 12-foot height is not the  
6 proper height, then the next issue is, who pays for  
7 the raising of the lines. So those are the two  
8 issues that are involved in the case.

9                   The issue of whether the vegetation --  
10 whether we trespassed onto Mr. Bourkland's property  
11 to cut trees that are within the right-of-way and  
12 within the way the lines should be run, that's  
13 another issue, I guess. He's raised it. We're  
14 going to have testimony with respect to all that.

15                   Let's just get on with the evidentiary  
16 hearing. And then the Commission can -- you and the  
17 Commission can determine what needs to be done next.

18           JUDGE HAYNES: I tend to agree with  
19 Mr. Goldstein. As far as outstanding discovery,  
20 he's indicated that the Company has provided you  
21 with what they have in writing with respect to that  
22 visit. And if there's no other outstanding

1 discovery, then I think the only thing to do is to  
2 go ahead and schedule the evidentiary hearing.

3 MR. BOURKLAND: Okay.

4 JUDGE HAYNES: Have the parties thought at all  
5 about time frame that they would be prepared to go  
6 to an evidentiary hearing?

7 MR. BOURKLAND: I can make any date except the  
8 holidays, of course.

9 JUDGE HAYNES: Sure.

10 MR. BOURKLAND: And how much time do you a lot  
11 for trial? Thinking an hour or two?

12 JUDGE HAYNES: You know --

13 MR. BOURKLAND: Secondly, I come in from  
14 St. Charles, so 11:00 a.m. or later is good.

15 JUDGE HAYNES: Okay. Mr. Goldstein has  
16 indicated that perhaps he might be bringing numerous  
17 witnesses, so --

18 MR. BOURKLAND: I will, as well.

19 JUDGE HAYNES: And have parties disclosed to  
20 each other all witnesses that they plan on --

21 MR. BOURKLAND: I plan to bring one witness.

22 MR. GOLDSTEIN: We'll probably have three,

1 Judge.

2 JUDGE HAYNES: Okay.

3 MR. GOLDSTEIN: One of the witnesses we plan on  
4 having, our NESC Code expert is retiring at the end  
5 of the year. Rather than calling him back  
6 afterwards, I would propose that we have the  
7 evidentiary hearing prior to the end of this year.

8 And I would further propose that we do  
9 it any day of the week of December 17th, so that we  
10 don't run right into Christmas.

11 JUDGE HAYNES: I also would like to state for  
12 the record that there may be a Staff witness that  
13 will look at this matter and give us an opinion on  
14 line heights, but I'm not quite sure who that will  
15 be or if there will be one.

16 So that week, I would have to say  
17 December 20th, is the best.

18 MR. GOLDSTEIN: That's fine with me, Judge.

19 JUDGE HAYNES: Thursday.

20 MR. PARISE: I'm starting my vacation, but  
21 that's fine.

22 JUDGE HAYNES: December 19th is also fine.

1       MR. PARISE:  December 19th is better for me.

2       JUDGE HAYNES:  I don't want to wreck people's

3   vacations.  December 19th.

4       MR. PARISE:  Can we start at 10:00 o'clock?

5   This may go a long time.

6       JUDGE HAYNES:  This may go awhile.

7       MR. GOLDSTEIN:  Judge, I assume that

8   Mr. Bourkland is going to have his neighbor,

9   Mr. Muelanthaller as his witness --

10      JUDGE HAYNES:  Is that the witness you intend to

11   bring?

12      MR. BOURKLAND:  That is.

13      MR. GOLDSTEIN:  That's perfectly fine with me.

14   We will provide a list of witnesses that we'll have.

15   We would like to know who the Staff witness is as

16   soon as possible.

17      JUDGE HAYNES:  I will let parties know.  And if

18   a Staff person would be involved, you'd probably

19   find out because he would want to see discovery.  I

20   will let the parties know.

21                    So December 19th, and we'll do it at

22   11:00, with the understanding that we can always

1 stay past 5:00, but hopefully we won't have to.

2                   Is there anything else that we need to  
3 discuss?

4                   Are you familiar with how this will  
5 proceed when we go to evidentiary hearing?

6                   You will get the opportunity to go  
7 first.

8       MR. BOURKLAND: Okay.

9       JUDGE HAYNES: And you will have to present your  
10 witnesses and then they'll be able to cross-examine  
11 you. And then they'll present their witnesses and  
12 then you will be able to cross-examine their  
13 witnesses.

14       MR. BOURKLAND: Very well.

15       JUDGE HAYNES: And a decision won't be issued  
16 that day. I'll be issuing a written decision at a  
17 later date that the Commission will either agree  
18 with or overrule. So you're aware that you won't  
19 get your answer on December 20th.

20       MR. BOURKLAND: That's okay. It's been 16 years  
21 so far -- 17 years.

22       JUDGE HAYNES: Is there anything further? Any

1 questions?

2 MR. GOLDSTEIN: The only thing else we're going  
3 to do, Judge, is check to make sure that the other  
4 two witnesses, Mr. Calligan and Mr. Micelli will be  
5 available on the 19th. We'll inform you this week.

6 JUDGE HAYNES: Okay.

7 MR. BOURKLAND: Likewise, I will check with  
8 Mr. Muelanthaller.

9 JUDGE HAYNES: Okay.

10 MR. BOURKLAND: To be sure that he's available.

11 JUDGE HAYNES: Okay. And we can switch that day  
12 if we need to.

13 But if there's nothing else, then  
14 we're continued until December 19th at 11:00 a.m.

15 (Whereupon, the above-entitled  
16 matter was continued to  
17 December 19th, 2007.)

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